

Babbitt's conduct and testimony regarding the McCain letter also must be assessed against the dearth of evidence that the decision-making was actually influenced by the White House or DNC, and the absence of direct evidence that Ickes directed or told Babbitt to decide the Hudson matter in any particular way. This evidence could be used to show that Babbitt was not motivated to lie in the letter to McCain about the Ickes aspect of the Eckstein discussion, and instead was merely trying too hard to clarify what he did *not* say about Ickes to Eckstein. Babbitt could also point to the fact that he attached to his Aug. 30, 1996, letter a memorandum from Sibbison that actually detailed her contacts with Ickes's staff (albeit incompletely) – evidence that Babbitt maintains shows he had no intent to mislead McCain or withhold Ickes-related information from him.

In addition, Babbitt could argue that his letter to McCain was literally true which, while not a complete defense to the accusation that he intended for the letter to be misleading, would support Babbitt's claim that he was unwittingly misleading with McCain, and nothing more. Finally, Babbitt's insistence in his recollection of the fine details of the Eckstein discussion, if credited by the jury as an honest and reasonable recollection (by a person credited even by adverse witnesses as having a reputation for good character and truthfulness) could contribute to a finding that he did not intend to mislead McCain with his partial recitation of that recollection.

Any damage caused by Babbitt's misleading letter to McCain was done when Babbitt initially misled Sen. McCain in his August 1996 letter. By misleading McCain, Babbitt effectively dissuaded the Senator and his committee from further investigating the matter of White House or DNC interference in the Interior decision at a time when memories would have been fresher and records more accessible than they were a year later when a different committee